Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In The

Supreme Court Of The United States

October Term, 1996

Hercules Watson,

Petitioner,

vs.

PACE SUBURBAN BUS COMPANY,DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY,

Respondent.

On Petition For A Writ Of Certiorari To
In The United States Of Appeals
For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Hercules Watson
Pro se Attorney
4242 W. 21st Place
Chicago, Illinois 60623
(773) 762-6888

38 pp

QUESTIONS PRESENTED

EQUAL EMPLOYMENT OPPORTYUNITY COMMISSION NOTICE OF RIGHT TO SUE Date 26 August ,1996

Under whose authority was Plaintiff Hercules Watson Acting on? His own or that of supervision Robare Robare?

Did the respondent's knowingly violated the Plaintiffs constitutional right under the 1st, 4th, 5th, 6th, and 14th Amendment?

1. I, Hercules Watson ("plaintiff") on August 4, 1995 was terminated from Pace West Division , a bus operator. The basis for the termination was that watson: violated a number of work rules in connection with a confrontation with a passenger that occurred on July 27, 1995.

2.I want to know what happened to RON ROBARE'S REPORT (PM) DISPATCHER ON DUTY at the time of the INCIDENT, ON JULY 27,1995 FORM 1600 TO 1700. I want a copy of the TAPE recorded conversation THAT is ON FILE AT SOUTH WEST DIVISION.

3.DEFINE CONFRONTATION

4.with whom did I have the confrontation with?

5.Where did the confrontation take place?

6.where is the report?

7.what was the confrontation about?

7. Where is the complaint by this unknown person?

8. What data are you basing this confrontation on?

9. When did he violate, them and how did he violate them?

10 Who requested the authorities (REPORT) at the incident scene ?

11. Richard Pullia Report sating the reason why he put me on suspension

12. Richard Pullia Report sating why he pull Hercules Watson out of service.

13. COURTESY CARD from the passengers on July 27, 1995

14. DEPOSITIONS in meeting number two on August 4, 1995

15. DEPOSITIONS in meeting number one on July 28, 1995.

16. In what way did I fail to accommodate the PASSENGERS?

17.What was said that was rude and argumentative with management I am prepare to produce what was said in the July 28,1995 meeting and the August 4, 1995 meeting word for word. .

18. The Attendance policy

19. Was there an Investigation done by the Appellant's Court for the seventh circuit? If no Why? If yes Why?

20. A copy of the taped recorded conversation that took place between me and the dispatcher on channel's 1 and 2 on July 27, 1995.

21. Pace West policy on why Richard Pullia is keeping a separate secret illegal folder of anonymous complaint of which he using against discharged drivers at arbitration hearings?

22. Rule Violations report of A1, A2, A3, F7,F8, F9, F10, F11, F27, F32, P, Q and page 26-1 through 26-11 of the professional bus operation's hand book

23. Veron Morgan report stating the reason why he did not give me a copy of my safety file , on a August 24, 1995

24. Brenda Dillers supervisor 41 report at the incident scene.

25. What physical documentation did they use to base their decision on in this case?

26. Who did the Investigation for the Appellant's Court?

27 Were in my personnel file can any of this documentation be found, that the Appellant's Court is basing their decision on? and I want a copy of all supporting documentation?

contents

28 Was there and Investigation done by the Defendant
If no Why If yes Why?
29. Who did the Investigation for the Defendant?
30. What physical documentation does the Defendant have
to base their decision on in this case?

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PETITON FOR A WRIT OF CERTIORARI

Hercules Watson. Petitions the Court to issue a writ of certiorari to review the decision and judgment of the United States court of Appeals of the Seventh Circuit, entered on December 22, 1997

JURDICTION AND OPINION BELOW

Petitioners, Hercules Watson Pro Se (hereinafter referred to as the "victim").appeal the decision District Court for the Northern district of Illinois Eastern Division Court of Appeals dated May 28 1997. The decision by the District Court for the Northern district of Illinois Court of Appeals is reported at No. 97-2319 (hereinafter referred to as the "National disaster ") The victim filed a Petition for rehearing and suggestion for rehearing en banc with the UNITED STATES Court OF APPEALS FOR THE SEVENTH CIRCUIT on December 5, 1997 This appeal; is being docketed in this Court within ninety (90) days of the denial for rehearing and suggestion for rehearing EN BANC. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

UNITED STATES CONSTITUTION

This case involves the First, Fifth, Six, Seven, and Fourteenth Amendments of the United States Constitution.

The First Amendment provides that:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; pr the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. **The Fifth Amendment provides that**:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in them of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation **The Six Amendment provides that**: In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been

previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

The Seven Amendment provides that:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by, a jury, shall be otherwise re-examined in any Court of the United State, than according to the rules of the common law.

The Fourteenth Amendment provides that:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United Sates and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens any of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPLICATION FEDERAL STATUES

The federal statutes applicable to this case are found in federal Statutes 28 U.S.C. 1254 (1)

STATEMENT OF THE CASE

The guide to American Law Volumes 11 page 57 Collective Bargaining Agreement XIII Discharge and Suits A. Advance Notice of Discharge. An employee shall be given written notice and warning that he may be discharged foe a repeated offense. **The Six Amendment provides that:** A copy of said notice and warning shall be given to the Office Steward. No employee will be discharge without advance notice in writing to the employees and to the Union, stating the reasons for discharge, for such offense. **The Fifth Amendment provides that:** I Hercules Watson was not given an advance notice in writing as to the reason for being discharge, By Mr. Pullia the Regional Division Manager of Pace West Division. I, Hercules Watson was terminated on August 4, 1995 from Pace West Division for an alleged confrontation, of which I was not presented with a written complaint from anyone involved at the alleged confrontation. **The Six Amendment provides that:** I have a Constitutional

Right to know who my accuser is? According to the14th Amendment of the United State Constitution under Due Process. I find that this notice of Dismissal is baseless and unconstitutional. I was never charged by anyone associated with this confrontation of any wrong doing. **The Fifth Amendment provides that: The Six Amendment provides that**: Mr. Meyers the arbitrator at my hearing was not presented with any written documentation from anyone involved at the alleged incident. This is a violation of the Illinois Public relations act sec 14 D & E sec 1230.90 conduct of the interest hearing (F) also Mr. Meyers award and decision was based on hearsay and inadmissible evidence. Douglas Sonntag and Althea Girak were allowed to give testimony against me when there were no signed validated complaints against me by either of these individuals in my personnel file personnel record review act (820 ILCS 40/0.01-13).**The Fifth Amendment provides that: The Six Amendment provides that**: page 3 40/4 personnel record information

Use of information according to this act only information that is contained in my personnel folder can be use against me. Personnel record information that was not included in the personnel record but should have been as required by this Act shall not be used by an employer in a judicial or quasi-judicial proceeding. However, personnel record information which, in the opinion of the judge in a judicial proceeding or the hearing officer in a quasi judicial proceeding, was not intentionally excluded from the personnel record may be used by the employer in the proceeding if the employee agrees or has been given a reasonable time to review the information. Material that should have been included in the personnel record shall be used at the request of the employee. I was not presented when this award and decision were hand down. State of Illinois Circuit Court of Cook County Court-Annexed Mandatory Arbitration Program Arbitrators Reference Manual prepared By: Gary H. Schwartz, Esq. January 1997 Part 1 Section VIII part B which states (Supreme Court Rule 92)

this 2
at Chi

Notary

BEST AVA

The award should be signed by the arbitrators or the majority of them Question about the award and decision from page number 3 paragraph 3and 4.

Why was Peter R. Meyers the only arbitrator?

Who are Fred Hayes and James Cox?

What role if any does these two people have concerning this case?

Why are these two people listed on the award and decision?

What is the reason why Fred hayes and James Cox were not present at the hearing?

Why are Fred Hayes and James Cox named as permanent Arbitrators when they had no role concerning this case

What is the case number?

How can there be a decision by a committee when there was only one arbitrator at the hearing?

Where can I locate the case number on the award and decision?

I Hercules Watson did not give my written consent for James Cox, and Fred Hayes to view my files. A dissenting vote without further comment may be

LABLE COPY

arbitrators we, the undersigned arbitrators, having been duly appointed and sworn (or affirmed), make the following award: The award should be legibly written in clear and understandable language. Note that the panel is entering an award and not a judgment (I Hercules Watson was not present when the award was handed down.). If a party fails to appear both in person and by counsel the panel should indicate that party's name in the box provided. B. Rule for Effective Award Drafting Include all consolidated case numbers in the entitlement. Fashion the award matching each claim to the appropriate case number. d tendering the award As soon as the award is drafted it should be tendered to the Administration for filing with the Clerk of the Court. No arbitrator should leave the premise until the administration has examined the award and determined that there is no further business for the panel to accomplish at that time rule 93.Rejection of award Committee Comments Paragraph a (2) page 57 Even under the Illinois Uniform Arbitration Act, section 112, it has

been interpreted by the Illinois Supreme Court that an arbitration award may not be set aside, upon application to a court, for the arbitrator's errors in judgment of mistakes of law or fact. (Garner V. Ferguson (1979), 76 Ill. 2d 1, 389 N.2d 1181) Under this section of the U. A. A., a party may apply to the court to vacate the award where the award was procured by corruption, fraud or other undue means, or that at arbitrator was guilty of misconduct prejudicing the rights of any party, or the arbitrators exceeded their powers. The Committee urges the interpretation that such alleged conduct should be addressed to the for redress in a petition independent of the course of the proceedings in the action subsequent to the award. That the sole remedy in relation to the award, as an intermediate mechanism to resolve the dispute. Should be to avail oneself of the right to a trail.. Which is a clear violation of the personnel privacy act under section 40/4. Use of information according to this act only information

that is contained in my personnel folder can be use against me. Personnel record information that was not included in the personnel record but should have been as required by this Act shall not be used by an employer in a judicial or quasi-judicial proceeding. However, personnel record information which, in the opinion of the judge in a judicial proceeding or the hearing officer in a quasi judicial proceeding, was not intentionally excluded from the personnel record may be used by the employer in the proceeding if the employee agrees or has been given a reasonable time to review the information. Material that should have been included in the personnel record shall be used at the request of the employee. Also Mr. Meyers allowed Mr. Pullia the Regional Division manager of Pace West Division under the direction of Pace's attorney Mr. Pawlak to present as evidence an Illegal separates secret folder of anonymous unsigned complaints against me at the hearing that is a clear violation of our local 241 collective bargaining agreement. Sections 5.14 Anonymous complaints shall not be

included in an employee's personnel file This admission as evidence should have been ruled inadmissible. Mr. Meyer the arbitrator did not listen to the tape recorded conversation between the operator (Hercules Watson) and the P.M. dispatcher (Rob Robare) who decided that he had heard enough of the verbal abuse from the abusive, argumentative, and disruptive passenger and that he was sending the police to the scene and that I was to stand by for their arrival. Standard operating procedure prohibits me from continuing to operate my bus after I have been notified by supervision that the police are in route. This is why I did not let any of my passengers exit the bus. All of the witnesses who were on board at the time of the confrontation wrote written statements in support of my actions. According to page 86 of the arbitrary transcript supervisor Brenda Dillard testimony well they thought that the driver was right. They said that the driver wouldn't let the guy off there because that's not that bus stop. These

written statements were disposed of by Pace West Division Management. Mr. Meyers was not presented with any written documentation to support his decision. During the course of deposition #1 Richard Pullia decided to extend Watson's suspension indefinitely pending further investigation. On August 4, 1995 Pullia and Watson met at deposition #2 at that time Pullia offered Watson A Illegal last Chance agreement under which Watson was not allowed to read. He was being cocearce into signing this illegal document with the corporation of my Union Rep. Dan Benson. Watson refused to accept or sign the agreement because Mr. Benson nor Mr. Pullia could not verify the legal refused to accept or sign the agreement because Mr. Benson nor Mr. Pullia could not verify the legal contents of the document. According to my personnel file I have no signed complaints or written violations, and only one day of absence. Pace West has instituted an Illegal Absenteeism and Miss Rule Policy. I Hercules Watson was cocearced into signing this Illegal Unconstitutional Document by Pace West Division.

Date: January 24, 1995

To All Bargained For Employees Pace West Division

From Richard Pullia
Regional Division Manager
West/Fox Valley/River Divisions

Re: **Absenteeism and Miss Rule**

In according with section A, obedience to the general rule book, revised December 1991, I acknowledge that I have received a copy of the Pace West Division Absenteeism and Miss Rules. Mr. Richard Pullia Regional Division Manager deliberately withheld the first six pages of this booklet in his desperate attempt to hide the signature of Joseph DiJohn Executive Director of Pace Bus Company, from ***E.E.O.C*** during the course of the investigation which would be considered fraud in any court of law Effective February 1, 1995, and consistent with terms of the Collective Bargaining Agreement by and between Pace West Division and Local 241 of the

amalgamated Transit Union, Pace West Division will adopt and implement the attached Absenteeism and Miss Rules Steinberg V. Chicago Medical School A contract is an agreement between competent parties, based upon a consideration sufficient in law, to do or not do a particular thing. It is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty . [citation] A contract's essential requirements are: competent parties, valid subject matter, legal consideration, mutuality of obligation and mutuality of agreement.. where are the signed signatures of joseph DiJohn Executive Director of Pace Bus Company and Iaiah Thomas President and Business agent of Local 241 on the absenteeism and miss rule policy? These two signatures are needed to make this police a legal binding contract. In accordance with Section A, obedience to the General Rule Book, revised December 1991, Pace Suburban Bus Division of the RTA General Rule Book governing all employees revised December 1991. I acknowledge that I have received a copy of the Pace West Division Absenteeism and Miss rules. Pace West fraudulently submitted statements stating that the plaintiff

Hercules Watson filed a suit with The Illinois Department of Employment Security as a result of his discharge from Pace West Division Illinois Dept. of employment Security :Local Office # 15 35 South 19th Avenue Maywood IL 60153 Attn. : Eugenia Curry The final incident occurred on 7/27/95, **The First Amendment provides that:** when the claimant was involved in a lengthy dispute with a passenger. The claimant failed to accommodate the passenger of releasing him to a reasonable extent. Thereafter, authority was summoned and the outcome was a suit pending for the claimant. Smith and Roberson's Business Law Uniform C Smith and Roberson's Business Law Uniform Commercial code Fifth Edition Chapter 8 Conduct invalidation Manifested Assent Fraud in the Inducement page 157ommercial code Fifth Edition Chapter 8 Conduct invalidation Manifested Assent Fraud in the Inducement page 157 This kind of fraud is a misrepresentation of material fact by one party to other who consents to enter into a contract in reliance upon the misrepresentation.

CONSTITUTION ISSUE FRIST RAISED

At the July 11-1997 Brief for the Appellant Plaintiff raised the 14th Amendment Petitioner first presented the 14th, Due Process Issues.

FOURTHTEENTH AMENDMENT VIOLATION

The panel decision entered in this case is in direct conflict with the Illinois decision ignores several case from this court which when read together clearly man date that an advance written warning is required before an employer can terminate an employee Go***ss V. Lopez (1975) 419 U. S. 565, 95 S. Ct. 729, 42 L Ed.2d 725*** I Hercules Watson was denied his Due Process according to the 14th amendments of the constitution of the United States because there were no signed complaints ever submitted to anyone any where at anytime by anyone. The panel in Err in not being able to inform the Plaintiff as to whom he has and incident with is a clear violation of six amendment of the U.S. Constitution. ***In JACKSON V. INDIANA, 406 U.S. 715, 32 L Ed. 2d, 435 (1972)*** I have a god given right and I have a constitutional right to Know who my accuser is under Due Process. What physical evidence was use by the panel to basing their decision and I want a copy of all the documentation use by the panel

In Loper V. Beto, 405 U. S, 473, 31 L Ed. 374 (1972) The denial of herbs corpus was reversed by the Supreme Court which held that the use of any record of prior convictions, which were constitutionally invalid, to impeach the credibility of a defendant was denial of due process.

DUE PROCESS VIOLATION

IN this case Did the panel err in concluding that plaintiffs fourteenth amendment and the Fifth amendment and Six amendment retaliation claim against Pace West was non-Evident even though an act committed by Pace constituting a constructive discharge of plaintiff from his Job as a bus operator. Plaintiff was discharged for a incident of which their are no written complaints signed or otherwise logged

giants him from anyone associated with the incident and his over all work record Did the panel err by ignoring this Court's decision in Jackson V. Metro Politan Edison Co. (1974 419 U.S. 345. 95 S CT, 449, 42 L Ed. 2d. Did the panel err by ignoring this Court's decision in Clements V. Barney's sporting goods store (1980) 84.11. App 600, 40 Ill Dec 342, 406 N E 2d 43

Goss V. Lopez (1975) 419 U. S. 565, 95 S. Ct. 729, 42 L Ed.2d 725

Federal Statutes UNITED STATES code annotated Title 30-938 Mineral Lands and Mining

REASONS FOR GRANTING THE WRIT Appellant , as a threshold matter, express his disappointment that the author of three panel opinion has chosen this case to adopt a satirical approach that , in Appellants' view, ignores Canon 2 A JUDGE SHOULD AVOLD IMPROPRIETY AND THE APPEARANCE OF IMPROPRITETY IN THE ACTIVITIES

A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Misapprehensions of Fact

BEST AVAIL

Where in my personnel file do it say that Watson was sitting at a red light? Who wrote up the report? When was the report wrote up ?

Misapprehensions of Law

What known company procedure did Watson violate? When did he violate, how did he violate them?

Why wasn't the issue of constitutionality addressed by this court? What is my Job description

CONCLUSIONS

In light of the foregoing Due Process transgressions and because of the violation of the First, fifth, six, seven, and Fourteenth Amendment, this Court should grant certiorari and reverse the decision of the Illinois Court of Appeals. Jury trail demanded

Subscribed and sworn to before me

TH day of Feb. 1998

, County of Cook, State of Illinois.

c.....

"OFFICIAL SEAL"
J. EDUARDO RUIZ
Notary Public, State of Illinois
My Commission Expires Nov. 15, 2000

Respectfully submitted,

HERCULES WATSON
Pro se Attorney
4242 W, 21st Place
Chicago, Illinois 60623
773-762-6888

ABLE COPY

Appendix A__DENIAL OF PETITION FOR REHEARING
EN BANC DATED
DECEMBER 22, 1997

STATE OF ILLINOIS

219 S. DEARBORN
STREET
CHICAGO, ILLINOIS 60604-1874
(312)435-5850
Cause Number
No. 97-2319-
Lower Court Number:
No. 96 C 7719

Michael W. Dobbins
CLERK OF THE SUPREME
COURT, COURT OF APPEALS

HERCULES WATSON
4242 W 21 PLACE
CHICAGO,ILL 60623
1-(773)762-6888

HERCULES WATSON-V-PACE SUBURUBAN BUS
DIVISION

You are hereby notified that the SUPREME COURT has on this 12/22/97 APPELLANT'S PETITION FOR REHEARING en banc is DENIED.

RICHARD A. POSNER , CHIEF JUDGE
ALL JUSTICES CONCUR , AA

WITNESS MY NAME AND THE SEAL OF SAID Court, this__st day of JANUARY, 1996

s/ Gino J. Agnello CLERK OF THE SUPREME COURT,
COURT OF APPEALS

Appendix A

ORDER

On consideration of the petition for rehearing with suggestion for rehearing en banc filed in the above-captioned case by the plaintiff-appellant, all of the judges on the original panel have voted to deny and none of the judges in active service has requested a vote thereon.

Therefore, the petition for rehearing with suggestion for rehearing en banc is DENIED.

APPENDIX B___

OPINION OF THE COURT OF APPEALS OF ILLINOIS
DATED NOVEMBER 21, 1997

HERCULES WATSON
Appellant-Plaintiff,

V.

PACE WEST DIVISION, Subdivision of the Regional Transportation Authority,

Appellee-Defendant.

No. 97-2319
Court of Appeals of Illinois

November 21, 1997
Hercules Watson for Appellants.

Francis Michael Pawlak and Thomas William Snyder for Appellee.

OPINION

BARTEAU, Judge.

Richard A. Posner, William J. Bauer, Terence T. Evans,

Appendix B

ORDER

Hercules Watson, an African-American male, filed a two-count complaint against his former employer, the Pace Suburban Bus Division of the regional Transportation Authority (Pace). Watson claims that Pace terminated him

APPENDIX B

on the basis of his race in violation of title VII of the civil rights Act of 1964, 42 U.S.C. 2000e et seq., and that Pace violated the statue of fraud in charging him with disregarding company procedures. The district court granted Pace summary judgment on the discrimination claim because Watson failed to raise a genuine issue of material fact. The district court also dismissed Watson's statue of frauds argument with prejudice for failure to state a claim. Watson appeals the grant of summary judgment and the dismissal of his statue of frauds claim, and we affirm.

After an examination of the briefs and the record, we have concluded that oral argument in unnecessary, and the appeal is submitted on the briefs and record. See Fed. R. App. P. 34(a); Cir. R. 34(f). Watts worked as a bus driver for Pace for over two years, during which time he regularly behaved discourteously and argumentatively toward passengers. For instance, on July 27, 1995, while stopped at a red light, an elderly passenger stepped into the stairwell at the front of the bus and indicated that he wished to exit the bus. Watson informed the passenger that it was a violation of federal law for a passenger to be in the stairwell and therefore the passenger needed to move behind the white line. Watson refused to allow the passenger to leave the bus, and the passenger refused to leave the stairwell and move behind the white line. Watson refused to proceed along the route until the passenger moved out of the stairwell. The situation escalated until the police were summoned and arrived several minutes later. Additionally, Brenda Dillard, a Pace Supervisor, and Richard Pullia, A Division Manager, responded to the call. The police arrived and

directed Watson to open the door to allow the passenger to leave, but took no other action. After questioning Watson, Dillard and Pullia determined that Watson should not finish the route and needed to report for a meeting with Pullia the next day.

Watson's subsequent discussions with management were also argumentative. During Watson's first meeting with Pullia, Watson continued to maintain that he was right and refused to accept any responsibility for the incident. During Watsson's second meeting with Pullia, Watson continued to interrupt Pullia as Pullia read a proposed resolution of events aloud. Watson eventually refused to sign the agreement. After watson refused to sign the agreement, Pullia terminated Watson and handed him a discharge letter detailing a number of different rule violations, as well as the July 27th incident.

Watson's union filed a grievance challenging Pace's termination of Watson. A hearing was held in February 21, 1996 before and arbitrator who found that Pace's decision to terminate Watson was fully justified.

Watson then filed the present action in district court. Watson alleged that Pace terminated him because of his race and points on other non-African-American employees who were not fired as evidence of his discriminatory termination. Watson also alleged that Pace is guilty of fraudulently labeling for failing to follow known company procedures" in violation of the Illinois statue of frauds. However, Watson presents no legal argument, either before this court or the district court, to support his statue of frauds claim. The district court, finding that Watson presented no genuine issue of material fact granted Pace summary judgment as to the discrimination claim, and dismissed Watson;s statue of frauds claim with prejudice because the Illinois statue of frauds contained no cause of action.

APPENDIX B

We review denote the districts court's granting of summary judgment and failure to state a claim, viewing all evidence and reasonable inferences in the light most favorable to the plaintiff. See Plair v. E.J. Brach & Sons, Inc., 104F .3d 343, 346 (7th Cir. 1997) (Failure to state a claim). Additionally, because Watson is proceeding Pro Se we construe his complaint liberally. See Haines v. Kerner, 404 U.S. 519,520 *(1972)*. In order to establish a prima facie case of racial discrimination under Title VII of the civil Rights act of 1964 using the indirect, burden-shifting method, Watson must show that (1) he is a member of a protected group, (2) he was performing up to his employers legitimate standards, (3) that he was discharged, and (4) that other similarities-situated employees outside his race were treated more favorably. See McDonnell Douglas Corp. v. Green,411 U.S. 792 (1973); Cowan v. Glenbrook Security Services, Inc., 123 F.3d 438,445 (7th Cir. 1997).

Watson is an African-American and therefore a member of a protected group. Additionally, Watson was discharged. Therefore, Watson meets the first and third prongs of the McDonnell Douglas test.

However, Watson fails to establish the fourth prong of the test - that he was treated less favorably than other similarly situated non-African-American employees. "The qualification 'similarity situated' is important. Otherwise all [Watson] would have to do to survive summary judgment would be to point one [non-African-American] employee whom [Pace] had not fired" Wallace v. SMC Pneumatics, Inc., 103 F.3d 1394, 1398 (7th Cir. 1997). Watson fails to present any evidence of similarly situated employees. Watson does list seven non-African-American employees who were not fired after allegedly violating company policy. However none of the seven employees were similarly

situated None of the employees were allowed to continue employment after repeated behavioral problems, escalating a relatively minor situation into one which required police intervention, failing to accept any responsibility for incidents, and refusing to sign a supervisors proposed resolution. It is clear that we cannot compare Watson's dismissal with the list of seven employees he gives us on appeal, because none of them are similarly situated. *See* Hunt-Golliday v. Metropolitan Water Reclamation Dist. Of Greater Chicago, 104 F.3d 1004, 1010 (7th Cir. 1997). We add that Watson also does not establish a prima facie case under the third prong of the teat - that he was performing up to his employer's legitimate standards. As we have emphasized recently in Coco *v.* Elmwood Care, Inc., No. 97-1697, 1997 WL 695406, at 2 (7th Cir. Nov. 10, 1997), Watson " is out of luck if he can't show that he was meeting his employer's legitimate expectations." As the arbitrator noted, customer relations is a significant portion of Watson's responsibilities and that without proper behavior and courtesy towards passengers, which Watson was clearly failing to provide. As such, Watson was not performing up to his employers legitimate standards. Since Watson does not establish a prima facie case of racial discrimination, it is unnecessary to apply the remainder of the burden-shifting analysis of McDonnell Douglas. Finally, Watson contends that his statute of frauds claim should be reinstated, but offers no legal analysis as to why it should be reinstated. "Even pro se litigants. must except to file a legal argument and some supporting authority." United States ex rel. Verdone v. Circuit Court for Taylor County, 73 F.3d 669, 673 97th Cir. 1995) (per curiam).As we have said else where:" A

litigant who fails to press a point by supporting it with pertinent authority, or by showing why it is sound despite a lack of supporting forfeits the point. We will not do research his for him." *Pelfresne v. Village of William's Bay, 917 F.2d 017, 1023 (7th Cir. 1990) Accordingly, the decision of the district court is*

APPENDIX C__

OPINION OF THE DISTRICT COURT
GRANTS Defendant summary judgment on Count I and dismisses Count II, with prejudice.

HERCULES WATSON

Plaintiff,

V.

PACE WEST DIVISION, Subdivision of the Regional Transportation Authority,

Defendant.

No. 96 C-7719

UNITED STATES DISTRICT Court,
NORTHERN DISTRICT of Illinois

April 30, 1997

Francis Michael Pawlak and Thomas William Snyder for Defendant.

OPINION

BARTEAU, Judge.

John A. Nordberg

APPENDIX C

AFFIRMED ORDER

Plaintiff Hercules Watson was sued for his former employer, Defendant Pace Suburban Bus Division of the regional Transportation Authority ("Pace"), in a two-count complaint, claiming discrimination based upon race in violation of the Title VII of the civil Rights Act of 1964 and "fraudulent [] labeling [of] him for failing to follow known company procedures" in violation of the Illinois stature of frauds. Before the court is Defendant's Motion to Dismiss Or, in the Alternative, Motion for Summary Judgment.

FACTUAL BACKGROUND

The following facts are undisputed. On August 5, 1995, Pace terminated Watson, a bus operator, purportedly based upon an incident that occurred on July 27, 1995 and subsequent behavior towards management following the incident. Watson's Union filed a grievance on his behalf challenging the termination on the grounds that Pace did not have just cause to discharge Watson, as required by the Collective Bargaining Agreement. The Parties proceeded to arbitration on the grievance: a hearing was held on February 21, 1996, and on May 13, 1996 the arbitrator issued his decision in the favor of Pace, finding that Watson's "violations of [Pace]'s rules of conduct in connection with the July 27th incident fully justify [Pace]'s decision to terminate his employment." (Arbitrator's Decision, Def.'s Ex. B at 21)

ANALYSIS

Although Watson alleges in his complaint that "non-black employees have not been discharged under similar

circumstances," (Compl. At 2), Plaintiff's response makes no reference to race, discrimination, and defendant's treatment of similarity situated non-black employees. Rather, Plaintiff merely rehashes the arbitration issue: whether Plaintiff's termination was for just cause. As the seventh Circuit had explained, "when confronted with a motion for summary judgment, party who bears the burden of proof on a particular issue may not rest on it's pleading, but must affirmatively demonstrate, by specific factual allegations that there is no Genuine issue of material fact which requires trial." Meching v. Sears Roebuck & Co.., 864F.2d 1359, 1363 (7th Cir. 1988)(internal citation omitted). The seventh Circuit further explained that "we do not sit as a super-personnel department that reexamines an entity's business decisions. No matter how medieval a firm's practice, no matter how high-handed it's decisional process, no matter how mistaken the firm's managers, [Title VII] does not interfere. Rather, our inquiry is limited to whether the employer gave an honest explanation for it's behavior." Id. At 1365 (internal citations omitted). Finally, where "Plaintiffs have failed to support their bare contention that the" employer knew of employees who engaged in the same behavior, the Seventh Circuit has held that "the mere belief, without any factual support, that the [employer] know of such [similarity situated employees] and faied to discharge does not establish a genuine issue of material fact." Id. At 1366 (citation omitted). Accordingly, Plaintiff's only reference to racial discrimination—the allegation that non-black employees have not been discharged under similar circumstances-doesn't save Plaintiff from summary judgment. In sum, as Plaintiff has failed to raise a genuine issue of material fact, the court II with prejudice for failure to state a claim, as the Illinois

statute of frauds does not provide a cause of action. This a final judgment.

Plaintiff has not filed a response to Defendant's 12M statement. Local Rule 12N(3)(b) provides that "all material facts set fourth in the statement required of the moving party will be deemed to be admitted unless controverted by the statement of the opposing party." Nevertheless, in the exercise of it's direction, the court will not apply Rule 12 strictly in light of Plaintiff's pro se status, but will deem the asserted facts in Defendant 12M statement admitted only if they are not controverted anywhere in the record.